*The Hon'ble Sri Justice V.V.S.RAO

+W.P.No.19518 of 2004

%16.11.2004

£Simmiti Arjuna

…Petitioner

Vs.

$ Pappala Narasaiah

… Respondents

!For the petitioner …Mr.T.Niranjan Reddy

^For Respondent No.1 … Mr.Upendra, representing Mr.E.V.Bhagiratha Rao

For Respondent No.2 … G.P.for Panchayat Raj & Rural Dev.

<Gist:

>Head Notes:

?1. 1983 (II) AnWR 412 (DB)

2. 2004 (4) ALD 525

3.2000 (3) ALT 547 (DB)

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SIXTEENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

-

WRIT PETITION NO : 19518 of 2004

Between:

Simmiti Arjuna, S/o.Guruvulu
Residing at Lemarthi Agraharam Village
Paravada Mandal, Visakhapatnam District.

..... PETITIONER

AND

1 Pappala Narasaiah S/o.Late Kondappa
Residing at Lemarthi Agraharam, Paravada Mandal, Visakhapatnam.
2 The District Election Authority-cum-District Collector
Visakhapatnam District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of certiorari by calling for the records relating to the order passed in E.O.P No.22 of 2001 dated 13.10.2004 on the file of Election Tribunal/Principal Junior Civil Judge, Anakapalle, Visakhapatnam District and set aside the same.

Counsel for the Petitioner:MR.T.NIRANJAN REDDY

Counsel for the Respondent No.1:MR. UPENDRA, REPRESENTING MR.E.V.BHAGIRATHA RAO

Counsel for the Respondent No.2. G.P.FOR PANCHAYAT RAJ & RURAL DEV.

The Court made the following :

ORDER:

The petitioner was elected as Sarpanch in the election for the office of Sarpanch of Lemarthi Agraharam Village, Paravada Mandal, Visakhapatnam District. The petitioner herein secured 444 votes, first respondent secured 443 votes, and another contestant, Sri Narsinga Rao, secured 130 votes. The petitioner's election was challenged by first respondent in E.O.P.No.22 of 2001 on the file of the Court of Principal Junior Civil Judge-cum-Election Tribunal, Anakapalli. The only ground on which the election of the petitioner was challenged is that the votes in booth No.5 at serial Nos.792 and 793 of Lemarthi Agraharam Village are also registered voters of Edulapaka Bonangi Village at serial Nos.981 and 982 of the voters list of the said village, and that those two voters having voted in both Gram Panchayat elections those two votes are invalid votes. The petitioner herein opposed the election petition *inter alia* contending that he is not aware whether the two voters who allegedly are registered voters of another village are voted in favour of petitioner, that the election petition is barred by limitation and that petitioner is not aggrieved party.

The Election Tribunal-cum-Court of Principal Junior Civil Judge, Anakapalli, by order dt.13.10.2004 set aside the election of the petitioner and further declared that first respondent is duly elected to the office of the Sarpanch. The Election Tribunal recorded a finding that the two persons are disqualified because they have already cast their vote in E.Bonangi Village before reaching Lemarthi Agraharam Village. Be it also noted that first respondent examined P.Ws.1 to 6, and marked Exs.A.1 to A.10 and petitioner examined R.Ws.1 and 2 besides marking Exs.B.1 to B.7. Apart from this, Exs.X.1 to X.13 were also marked by the Court. A counter affidavit is filed by first respondent opposing the Writ Petition contending that the impugned order of the learned Tribunal does not suffer from any illegality or infirmity for want of jurisdiction, that the two votes of Medisetti Raju and Medisetti Venkatalaxmi from out of 444 votes are invalid and as first respondent got 443 votes, the learned Tribunal was correct in declaring the first respondent as elected.

Learned counsel for the petitioner submits that under the provisions of the A.P.Panchayat Raj Act, 1994 (for short, the Act) or the Rules made thereunder, there is no prohibition for a person to be registered as voter in two Gram Panchayats and therefore the learned Tribunal committed grave error in treating the vote of P.W.4 and his wife as invalid. Secondly, he contends that the order of the learned Tribunal declaring first respondent's election is vitiated, as first respondent did not specifically ask for any such relief. Learned counsel placed reliance on sub-section (6) of

Section 11 of the Act and Rules 13 and 15 of the Andhra Pradesh Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 1995. (hereafter called, the Rules). Learned counsel also placed strong reliance on the Division Bench judgment of this Court in **K.Sundara Rao v. V.Raghava Rao.**

Learned counsel for first respondent Sri Upendra, representing Sri E.V.Bhagiratha Rao, opposed the Writ Petition contending that the impugned order of the learned Tribunal does not suffer from any infirmity and that the Division Bench judgment cited by the learned counsel for the petitioner has no application.

The two points that arise for consideration are (1) whether the Act or any provisions in any of the Rules made under the Act prohibit a person from voting in more than one Gram Panchayat ? and (2) whether it would be valid for the Election Tribunal to declare the election petitioner as duly elected after setting aside the election of the person whose election is challenged ?

In Re Point No.(1)

The decision in **K.Sundara Rao v. V.Raghava Rao** (supra) arose under the A.P.Gram Panchayats Act, 1964 (hereafter called, 1964 Act), which is now repealed by A.P.Panchayat Raj Act, 1994. A Division Bench of this Court considered and interpreted Section 14-C(7) read with Section 14-B(2) of the 1964 Act as amended by Amendment Act of 1978. Section 14-B was in the following terms.

> 14-B. Conditions of registration: (1) Subject to the other provisions of this Act, every person who-
>
> (a) is not less than eighteen years age on the qualifying date, and
>
> (b) is ordinarily resident in the village, shall be entitled to be registered in the electoral roll for the gram Panchayat of that village.
>
> (2) No person shall be entitled to be registered in the electoral roll more than one gram Panchayat.
>
> (3) No person shall be entitled to be registered in the electoral roll for any gram Panchayat more than once.
>
> (4) If, in any case a question arises as to whether a person is ordinarily resident in a village at any relevant time, the question shall be determined with reference to all the facts of the case by such authority and in such manner as may be prescribed.
>
> Explanation:- The term “ordinarily resident” shall have the same meaning as defined in section 20 of the Representation of the People Act, 1950.

Section 14-C(6) and (7) were in the following terms

> 14-C(6). Every person whose name appears in the part of the electoral roll relating to a ward shall, subject to the other provisions of this Act be entitled to vote at any election which takes place in that ward while the electoral roll remains in force and no person whose name does not appear in such part of the electoral roll shall vote at any such selection.
>
> (7). No person shall vote at an election under this Act in more than one ward or more than once in the same ward and if he does so, all his votes shall be invalid.

The question arose before the Division Bench of this Court whether the vote of a person, who voted in both the Gram Panchayats is to be declared elected. Answering the question in the negative, the Division bench laid down as under.

> …In our view, it will be proper to hold that it refers to wards in one gram Panchayat and if a person votes in more than one ward or more than once in the same ward, in that gram panchayat, all his votes would be invalid. In cannot be read that it refers to a ward in more than one gram Panchayat, by any stretch of imagination and in our view, it will be out of context also. Therefore, we are not inclined to accept the argument advanced by the learned Counsel that the ward refers to not only in the gram Panchayat in which election takes place, but also ward or wards in the other gram Panchayats, even if election takes place at the same time in the other gram Panchayats. Even if a person casts his votes in different gram Panchayats, on the same date, we are of the view that such vote cannot be declared as invalid under sub-section (7) of Section 14-C in the absence of any positive provisions in this regard.

In 1994 Act there is no provision which is in similar terms as that of Section 14-B(2) of the 1964 Act. However, Section 11(6) extracted hereunder is *in pari materia* with Section 14-C(7) of the 1964 Act.

> 11(6). No person shall vote at an election under this Act in more than one ward or more than once in the same ward and if he does so, all his votes shall be invalid.

To my mind when the provision is *in pari materia* the interpretation placed by a Court of record even with reference to repealed Act is a precedent binding and all authorities while interpreting an amended provision. There is no reason warranting any deviation from the law laid down by this Court in **K.Sundara Rao v. V.Raghava Rao** (supra). Therefore, I am of the opinion that what is prohibited is vote by same person in more than one ward and no prohibition for a person to vote in two gram Panchayats on the same day if he is registered as voter. On that ground, therefore, the election tribunal could not have invalidated the votes of P.W.4 and his wife. This Court, therefore, holds that the judgment of the Tribunal suffers from this infirmity which is beyond cure.

In Re Point No.(2)

Section 233 of the Act is to the effect that no elections held under the Act can be called in question except by way of election petition presented to such an authority and in accordance with such Rules as may be made in that behalf. The Rules made in G.O.Ms.No.111, dt.3.3.1995 which are comprehensive have to be scrupulously followed by the Election Tribunal. In a recent judgment in **R.Jayalakshmamma v. Election Tribunal-cum-Senior Civil Judge, Punganur, Chittoor** I have considered the question whether an election petitioner, who succeeds in the petition before the Tribunal is entitled to seek a declaration that he is duly elected. After referring to Rules 12, 13 and 15 of the Rules, I held as under.

> An election to any office under the Act can be challenged on any of the grounds mentioned in Rule 12 of the Rules, namely, (i) that as on the date of election, the Returned Candidate was not qualified or was disqualified to be chosen to fill the seat under the Act, (ii) that the Returned Candidate committed corrupt practices as laid down under Section 211, (iii) that any nomination has been improperly rejected, and (iv) that the result of the election, insofar as the Returned Candidate is materially affected by improper acceptance of nomination or corrupt practice or improper rejection or the election is vitiated , non-compliance with the provisions of the Act and the Rules. As per Rule 12(A) of the Rules, if the Election Tribunal comes to the conclusion that the election of the Returned Candidate is vitiated by any of the above grounds, Election Tribunal has no discretion except declare the election of the Returned Candidate as void. It is also within the power of the Election Tribunal under Rule 12(B) to declare the Returned Candidate as disqualified to contest the election under the Act. **Rule 13 of the Rules applies to a situation where a petitioner not only calls the election of Returned Candidate in question as void but also seeks a declaration that he himself or any other candidate has been duly elected. In such a situation, the law requires Election Tribunal necessarily to declare the election petitioner to have been duly elected. The only condition, as stipulated under Rule 13(a) of the Rules is that the election petitioner received the majority of the valid votes.** What is important is the next candidate must have received majority of the valid votes, which means that excluding the Returned Candidate, whose election is declared void, among the other candidates remaining, the petitioner or some other candidate must have secured majority of the valid votes. Rule 15 of the Rules is essentially procedural nature and requires Election Tribunal after conclusion of the enquiry (i) to declare the election of the Returned Candidate or Candidates void, (ii) to declare any other party to the petition has been duly elected and/or (iii) to order fresh election.
>
> (emphasis supplied)

Therefore, an election of the petitioner who seeks declaration must specifically plead under Rule 13 that he be declared as elected and prove that he received majority of the valid votes. In an election petition after declaration of the elected candidate as invalid, in every case, as an incidental relief Election Tribunal cannot grant further declaration in favour of election petitioner that he/she got elected. A copy of the E.O.P.No.22 of 2001 filed by first respondent before the

Election Tribunal, Anakapalli, is placed before this Court. First respondent sought for declaration that the election of the petitioner herein as Sarpanch of Lemarthi Agraharam Village is null and void and no specific relief is prayed under Rule 13 of the Rules. Therefore, it was not proper for the Election Tribunal to grant such declaration and on this ground also the impugned order is liable to be quashed.

In the result for the above reasons, the Writ Petition succeeds and it is accordingly allowed with costs. A Writ in the nature of Certiorari shall issue accordingly.

_____

(V.V.S.RAO, J)

16.11.2004

bnr

Note:LR COPY BE MARKED.

(B.O)

bnr

The Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this

Tuesday, the Sixteenth Day of November, Two Thousand and Four

ASSISTANT REGISTRAR

To

(One fair copy to the Hon'ble Mr.Justice V.V.S.RAO for his Lordships kind perusal)

1. The District Collector-cum-District Election Authority
   Visakhapatnam District.

2. 2CCs to G.P. for Panchayat Raj & Rural Development

High Court Bldgs., Hyderabad (OUT)

3. 8 LR copies.

4. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.

5. The Secretary, A.P.Advocates Association Library, High Court Buildings, Hyderabad.

6. 2CD copies